Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

28-CA-258731

Case

April 2, 2020

Date Filed

DO NOT WRITE IN THIS SPACE

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

- no arranginar or trio orial go marriter to regionar	Director in winer are anoged amair labor practice of	ourica or is occurring.
1.	EMPLOYER AGAINST WHOM CHARGE IS BROUG	SHT
a. Name of Employer		b. Tel. No.
Envita Medical Center		(602)569-4144
		c. Cell No.
d. Address (street, city, state ZIP code)	e. Employer Representative	f. Fax No.
8759 E Bell Road	(b) (6), (b) (7)(C)	(602)569-4244
Building G		g. e-Mail
Scottsdale, AZ 85260		® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ® ®
, , , , , , , , , , , , , , , , , , , ,		h. Dispute Location (City and State)
		Scottsdale, AZ
i. Type of Establishment (factory, nursing home,	j. Principal Product or Service	k. Number of workers at dispute location
hotel)		
Outpatient Clinic	Cancer and Lyme Disease Clinic	100
- · · · · · · · · · · · · · · · · · · ·		
	I	

I. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

During the past six months, the above-named employer has interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the National Labor Relations Act, by its actions, including, but not limited to, causing the termination of its employees, including, but not limited to, (b) (6), (b) (7)(C), because they engaged in protected, concerted activities.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

3. Full name of party filing charge (if labor organization, give (b) (6), (b) (7)(C)	e full name, including local name and num	ber)
4a. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)		4b. Tel. No.
		4c. Cell No. (b) (6), (b) (7)(C)
		4d. Fax No.
		4e. e-Mail (b) (6), (b) (7)(C)
Full name of national or international labor organization organization)	f which it is an affiliate or constituent unit	(to be filled in when charge is filed by a labor
6. DECLARATION I declare that I have read the above charge and that the	no etatemente are true to the heet of	Tel. No.
my knowledge and belief.	ne statements are true to the best of	
(b) (6), (b) (7)(C)		Office, if any, Cell No.
Бу.	(b) (6), (b) (7)(C) an Individual	(b) (6), (b) (7)(C)
(sig ^{(b),(b),(b)} ,(b),(b),(b),(c) _{[attive} or person making charge)	Print Name and Title	Fax No.
$\frac{\text{Address:}}{(b)(6),(b)(7)(C)}(b)(6),(b)(7)(C)$	Date:	e-Mail (b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

NxGen "C" Assignment Sheet

Case Name: Envita Medical Center	gg	Category: 3
Method of Receipt eFile	Date Filed 4/2/2020	Amended Charge? □Yes ⊠No
Assign To: Doyle	Choose an item. Gordon	
Case/Inquiry Number: (Supervisor (b) (6), (b) (7)		(Agent)
	Potential 10(j)? ☐ Yes ⊠ No	Related/Blocked Cases:
Coordination? ☐ Yes ☒ No ☐ Cat	3 Organizing U.S. Postal Information	on Case Region
Bargaining Status:	t □Organizational Campaign	⊠None
☐ Seeking Initial C	ontract Seeking Successor Contract	
CA - 8(a)(1):		☐Repudiation/Modification of Contract
☐Coercive Actions (Surveillance, etc.)	CA - 8(a)(5):	CB - 8(b)(5):
□Coercive Rules	□Alter Ego	☐All Allegations
☐Coercive Statements (Threats, Promises	☐Failure to Sign Agreement	
of Benefits, etc.)	☐Refusal to Bargain/Bad Faith Bargaining	CB 945//O
☑Concerted Activities (Retaliation,	(incl'g surface bargaining/direct	CB - 8(b)(6):
Discharge, Discipline)	dealing)	☐ All Allegations
□Denial of Access	Refusal to Furnish Information	
☐Discharge of supervisor (Parker-Robb	☐Refusal to Recognize ☐Repudiation/Modification of Contract	CC - 8(b)(4)(A):
Chevrolet)	[Sec. 8(d)/Unilateral Changes]	□Lawsuits/Grievances
□Interrogation (Including Polling) □Lawsuits	☐ Shutdown or Relocate (e.g., First	☐Picketing/Handbilling
⊒Lawstitts ⊒Weingarten	National Maint.) Subcontract Work	□Statements
⊐ weingarten		
	CR 9/b)(1)(A):	CC - 8(b)(4)(B):
CA - 8(a)(2):	CB - 8(b)(1)(A): □Coercion, Incl'g Statements and Violence	□Lawsuits/Grievances
☐Assistance	□Denial of Access	☐ Picketing/Handbilling
Domination	Discipline (including charges/fines)/	□Statements
□Unlawful Recognition	Harassment	
	☐Duty of Fair Representation, incl'g	
CA - 8(a)(3):	Superseniority, denial of access	CC - 8(b)(4)(C):
☐ Changes in Terms and Conditions of	☐Hiring Halls	☐Lawsuits/Grievances ☐Picketing
Employment	☐ Picketing/Strike Actions	☐ Statements
□Discharge (Including Layoff and Refusal	Rules: Coercive	Statements
to Hire (not salting))	☐Union Dues and/or Membership Related	
Discipline	(including excessing fees)	CD - 8(b)(4)(D):
□Lockout		☐All Allegations
Refusal to Consider/Hire Applicant	CB - 8(b)(1)(B):	
(salting only) □Refusal to Hire Majority	☐Fund Contribution Related	
☐Refusal to Pine Majorky ☐Refusal to Reinstate E'ee/Striker (e.g.	□Lawsuits	CD - 8(b)(7)(A):
Laidlaw)	☐Other Allegations	☐All Allegations
☐Retaliatory Lawsuit	☐Statements/Threats/Violence	
☐Shutdown or Relocate/Subcontract Unit		CD - 8(b)(7)(B):
Work	CB 9(b)(2).	□All Allegations
☐Union Security Related Actions	CB - 8(b)(2): □Hiring Hall Related	
	□Lawsuits	OD 041/0/0
6. 6	☐Union Security Related Actions	CD - 8(b)(7)(C):
CA - 8(a)(4):	☐ Causing the Employer to	☐ All Allegations
□Changes in Terms and Conditions of Employment	Discriminate/Retaliate	
Employment ☐Discharge (Including Layoff and Refusal		CE - 8(e):
to Hire)		☐All Allegations against a Labor
□Discipline	CB - 8(b)(3):	Organization
☐Refusal to Reinstate Employee/Striker	Failure to Sign Agreement	☐All Allegations against an Employer
☐Shutdown or Relocate/Subcontract Unit	Refusal to Bargain/Bad Faith or Surface	
Work	Bargaining ☐Refusal to Furnish Information	CC 8(a):
	LINGINGE WE WILLIAM HUNDINGHOU	I'I KIAN





UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD

REGION 28 2600 North Central Avenue Suite 1400 Phoenix, AZ 85004

Agency Website: www.nlrb.gov Telephone: (602)640-2160 Fax: (602)640-2178



April 3, 2020

Envita Medical Center 8759 E. Bell Road Bldg G Scottsdale, AZ 85260

> Re: Envita Medical Center Case 28-CA-258731

Ladies and Gentlemen:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Field Attorney Nicholas Gordon whose telephone number is (602)416-4756. If this Board agent is not available, you may contact Supervisory Field Attorney Christopher J. Doyle whose telephone number is (602)416-4762.

<u>Right to Representation</u>: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, <u>www.nlrb.gov</u>, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

<u>Presentation of Your Evidence</u>: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

<u>Preservation of all Potential Evidence:</u> Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

<u>Prohibition on Recording Affidavit Interviews:</u> It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

<u>Procedures:</u> Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to

comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541, Investigative Procedures offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Cornele A. Overstreet Regional Director

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Enclosures:

- 1. Copy of Charge
- 2. Commerce Questionnaire

CAO:NJG:mhz

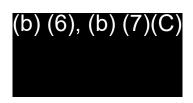


UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD

REGION 28 2600 North Central Avenue Suite 1400 Phoenix, AZ 85004

Agency Website: www.nlrb.gov Telephone: (602)640-2160 Fax: (602)640-2178 Download NLRB Mobile App

April 3, 2020



Re: Envita Medical Center Case 28-CA-258731

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on April 02, 2020 has been docketed as case number 28-CA-258731. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Field Attorney Nicholas Gordon whose telephone number is (602)416-4756. If this Board agent is not available, you may contact Supervisory Field Attorney Christopher J. Doyle whose telephone number is (602)416-4762.

<u>Right to Representation</u>: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, <u>www.nlrb.gov</u>, or from an NLRB office upon your request.

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<u>Presentation of Your Evidence</u>: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

<u>Preservation of all Potential Evidence:</u> Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Cornele A. Overstreet Regional Director

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CAO:NJG:mhz

From: <u>Gordon, Nicholas</u>

To: <u>Gordon, Nicholas</u>

Subject: RE: 28-CA-258731 Envita Medical Center- Affidavit Scheduling

Date: Monday, April 6, 2020 2:27:00 PM

Hello (()(6),(6)),

The NLRB does not disclose the content of our investigations to any party, but certain evidence may be disclosed to the Employer if this case proceeds to a trial. I will explain what that means during your affidavit. For now, please go ahead and e-file your documents, but keep in mind that review of your file will be quickest if you reduce your evidence to only the most important items. Usually, these are copies of disciplines/termination letters, or communications between you and management regarding your termination. If there are additional documents I need I will discuss with you during the affidavit.

I will add your appointment to my calendar for at 9:00am. Please provide me with the best telephone number to contact you at as well.

Best,

Please be advised that per GC Memo 20-01, the NLRB will only accept documents via e-filing from this point forward. Please be mindful of the new e-filing requirement as Regional offices have been instructed to disregard documents that are not e-filed on the NLRB.gov website.

Instructions for e-filing documents may be found at this link:

https://apps.nlrb.gov/myAccount/assets/E-Filing-System-User-Guide.pdf

Nicholas Gordon Field Attorney United States Government National Labor Relations Board, Region 28-Phoenix 602-416-4756 2600 N Central Ave #1400 Phoenix, AZ 85004

The NLRB requires all parties to file documents electronically through our online E-file system:

Documents: https://apps.nlrb.gov/eservice/efileterm.aspx

New Charge/Petition:

https://apps.nlrb.gov/eservice/efileterm.aspx?

app=chargeandpetition

From: (b) (6), (b) (7)(C), (b) (7)(D)

Sent: Monday, April 6, 2020 11:17 AM

To: Gordon, Nicholas < Nicholas. Gordon@nlrb.gov>

Subject: Re: 28-CA-258731 Envita Medical Center- Affidavit Scheduling

Hi Nick,

I can be available @ 9:00AM. Will the witnesses be named to Envita? Key witnesses to the event are (b) (6), (b) (7)(C) I do have supporting documents I can provide to you and will e-file.

Thank you,

On Mon, Apr 6, 2020 at 2:01 PM Gordon, Nicholas < Nicholas Gordon@nlrb.gov > wrote:

Hello (b) (6), (b) (7)(C), (b) (7)(D)

My name is Nick Gordon and I am the Board Agent assigned to investigate charge 28-CA-258731 filed against Envita Medical Center. I wanted to reach out to you in order to coordinate a time to take an affidavit from you and learn more about the subject of the charge. The charge alleges a Section 8(a)(1) discharge for engaging in protected concerted activities. As this is a retaliation case, it would help my investigation if you could prepare a brief statement that lays out a timeline of the facts and issues in the charge. It usually helps the affidavits proceed much more smoothly if you prepare this information in advance.

In addition, I need to schedule a time for you to give an affidavit. An affidavit is sworn testimony, given under oath, similar to testifying in court. The affidavit is the Board's main tool for investigating your charge. Therefore, you should plan on spending the majority of the day testifying. In order to prepare for our meeting, please e-file copies of the evidence you intend to present in support of your case so that I may review it in advance. Per the new General Counsel rules, all evidence must be e-filed in order to be considered by the Region during the investigation. Instructions for how to e-file may be found here:

https://apps.nlrb.gov/myAccount/assets/E-Filing-System-User-Guide.pdf. As this is an 8(a)(1) charge, I will most likely need to speak with you and any employees that were involved in the events leading up to your discharge. Please let me know the names and contact information of the witnesses you intend to present. I am available the following days to take your affidavit:

- t 9:00am
- t 9:00am
- at 9:00am
- at 9:00am

Please let me know which date you are available as soon as possible so that I may add your appointment to my calendar. As this case involves an unlawful discharge allegation I would expect the affidavit to last multiple hours depending on how quickly we can move through the testimony.

I would ask that you plan on spending the entirety of the day testifying.

As the Phoenix Regional office is currently restricting public visitors, I will conduct the affidavit by phone. Please provide me with your telephone number and be in a quiet area free from distractions during the affidavit.

Please let me know if you have any questions.

Please be advised that per GC Memo 20-01, the NLRB will only accept documents via e-filing from this point forward. Please be mindful of the new e-filing requirement as Regional offices have been instructed to disregard documents that are not e-filed on the NLRB.gov website.

Instructions for e-filing documents may be found at this link:

https://apps.nlrb.gov/myAccount/assets/E-Filing-System-User-Guide.pdf

Nicholas Gordon Field Attorney United States Government National Labor Relations Board, Region 28-Phoenix 602-416-4756 2600 N Central Ave #1400 Phoenix, AZ 85004

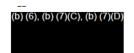
The NLRB requires all parties to file documents electronically through our online E-file system:

Documents: https://apps.nlrb.gov/eservice/efileterm.aspx

New Charge/Petition:

https://apps.nlrb.gov/eservice/efileterm.aspx?

app=chargeandpetition



From: Gordon, Nicholas
To:
Cc: isaaclawyer@qmail.com

Subject: 28-CA-258731 Envita Medical Center- Affidavit Review

Date: Wednesday, (0)(6),(0)(7), 2020, 4:37:09 PM

Attachments: AFF.28-CA-258731 Telephone Affidavit.pdf

Hello (6), (6), (7),(C), (6), (7),(D)

Enclosed please find a draft copy of an affidavit based on my telephone interview of you. Please read the affidavit carefully, and, <u>before you have signed the affidavit</u>, call me at 602-416-4756, so I can make any necessary changes and swear you to the affidavit.

After I have made any necessary changes to the affidavit and have sent you the final version of the affidavit and you have sworn to it, please do the following:

- 1. initial at the bottom right corner of each page, and
- 2. sign the affidavit in the designated space on the last page.

You should then scan all pages of the initialed and signed affidavit and e-file all pages of the initialed and signed affidavit through this Agency's website. To e-file the affidavit, you should go to www.nlrb.gov, click E-Filing, and then follow the directions for e-filing a document with the Regional Office as an Affidavit.

If you do not have access to a scanner, you can download a scanning app, such as Adobe Scan, on an iPhone, Android, or other smart phone and can use the app to scan your initialed and signed affidavit.

If you do not have access to a printer, scanner, or smartphone and or are otherwise unable to sign, scan, and e-file the final version of your affidavit, you should send the final corrected version of your affidavit to me as an email attachment at nicholas.gordon@nlrb.gov and do the following in your email:

- 1. explain why you are unable to e-file the affidavit;
- 2. state, <u>I swear that the contents of the attached affidavit are true and correct to the best of my knowledge and belief;</u> and
- type your first and last name underneath the statement that you swear to the contents of your affidavit.

Thank you very much for your anticipated cooperation. If you have any questions concerning this letter, please contact me at 602-416-4756

Please be advised that per GC Memo 20-01, the NLRB will only accept documents via e-filing from this point forward. Please be mindful of the new e-filing requirement as Regional offices have been instructed to disregard documents that are not e-filed on the NLRB.gov website.

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Nicholas Gordon Field Attorney United States Government National Labor Relations Board, Region 28-Phoenix 602-416-4756 2600 N Central Ave #1400 Phoenix, AZ 85004

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

and Evita Medical Center	CASE 28-CA-258731
REGIONAL DIRECTOR EXECUTIVE SECRETARY NATIONAL LABOR RELATIONS BOARD Washington, DC 20576	GENERAL COUNSEL NATIONAL LABOR RELATIONS BOARD Washington, DC 20570
THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATION (b) (6), (b) (7)(C)	IVE OF
IN THE ABOVE-CAPTIONED MATTER.	
CHECK THE APPROPRIATE BOX(ES) BELOW: REPRESENTATIVE IS AN ATTORNEY IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE TO CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WE DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENT CASEHANDLING MANUAL.	ADDITION TO THOSE DESCRIBED BELOW, THIS VILL RECEIVE ONLY COPIES OF CERTAIN IS AS DESCRIBED IN SEC. 11842.3 OF THE
Elliot S. Isaac	IATION)
NAME:14820 N. Cave Creek Rd., Suite 3, Phoenix	, AZ 85032
E-MAIL ADDRESS: isaaclawyer@gmail.com	
OFFICE TELEPHONE NUMBER; 602.404.0099	
CELL PHONE NUMBER:	
SIGNATURE: (Please sign in ink.)	

 $^{^{\}rm 1}$ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

Phoenix, AZ 85004

Agency Website: www.nlrb.gov Telephone: (602)640-2160 Fax: (602)640-2178

Agent's Direct Dial: (602)416-4756

April 8, 2020

(b) (6), (b) (7)(C)

Envita Medical Center 8759 E Bell Road Bldg G Scottsdale, AZ 85260

> Re: Envita Medical Center Case 28-CA-258731

Dear (b) (6), (b) (7)(C)

I am writing this letter to advise you that it is now necessary for me to take evidence from you regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before **April 22, 2020** with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows.

other individuals you believe have information relevant to the investigation of the above-captioned matter. Please confirm the names and job titles of the above individuals in your statement of position. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my

taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge. Please contact me by **April 8, 2020** to schedule these affidavits.

supervisors within the meaning of Section 2(11) or Agents within the meaning of Section 2(13) of the Act. For each individual that you admit to be a supervisor or agent within the meaning of Section 2(11) or 2(13) of the Act, it is not necessary to provide the documents requested in paragraphs 3 and 4 below. In your stipulation, please include the dates for which each of the above individuals were supervisors within the meaning of Section 2(11) or Agents within the meaning of Section 2(13) of the Act.

Documents: Please provide the following documents, along with any and all other evidence you deem to be relevant to the case:

- Completed Questionnaire on Commerce that was included in the letter notifying you of the filing of this charge.¹
- 2. A copy of the Employer's progressive discipline policy in effect at any time for the period January 1, 2018 to the present.

of the following actions concerning employees of the Employer, including but not limited to, recommendations that the Employer take the following actions:

- a. Hiring,
- b. Transferring,
- c. Suspending or disciplining,
- d. Laying off,
- e. Recalling,

¹ If the Employer is willing to stipulate to the Board's jurisdiction then it may be unnecessary to complete the Questionnaire on Commerce. Please contact me prior to filing your Position Statement to arrange for an appropriate stipulation.

- f. Promoting,
- g. Discharging,
- Assigning work,
- Rewarding,
- Scheduling or granting time off,
- k. Assigning overtime.
- 5. Documents reflecting the Employer's reasons for discharging the Charging Party on about (b) (6), (b) (7)(C) 2020.
- 6. Copies of all documents the Employer relied on in determining to terminate the Charging Party.
- 7. Copies of any discipline given to the Charging Party, including documents which reflect the reasons for issuing that discipline.
- 8. Copies of any termination letters regarding The Charging Party's discharge.
- Documents reflecting incidents where the Employer has discharged or disciplined other employees for the same or similar reasons that it discharged the Charging Party.
- 10. To the extent the Employer contends that the Charging Party was discharged for conduct or performance related reasons, documents reflecting the Charging Party's conduct or performance that were considered by the Employer.
- 11. Documents reflecting the Charging Party's disciplinary and/or performance history while employed by the Employer.
- Documents that show or describe the Charging Party's complaints regarding hostile work environments.
- 13. All documents the Employer relied upon during its investigation into a hostile work environment regarding (b) (6), (b) (7)(C)
- Documents which show or describe all employee complaints regarding (b) (6), (b) (7)(C) (creating a hostile work environment.

- 17. Any other documents you believe are relevant to the investigation.

Position Statement

Your position statement should set forth the facts concerning this matter and should address the Employer's legal position as to whether its actions violated Section 8 (a)(1) of the Act as alleged. Specifically, explain the rationale for the Employer's decision to discharge the Charging Party on about (b) (6), (b) (7)(c), 2020. Furthermore, address the extent and knowledge that the Employer had of the Charging Party's protected concerted activities, and the extent to which it formed the basis for the Employer's decision to harass, intimidate, or threaten the Charging terms and conditions of employment. Your in regards to Party and/or discriminate against position statement should discuss the Employer's knowledge of the Charging Party's complaints about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) creating a hostile work environment and failing to rectify workplace issues with coworkers. To the extent that the Employer contends the Charging Party was discharged for conduct or performance related reasons, please include evidence of instances where other employees were issued discipline or discharged for the same or similar conduct since about January 1, 2018. The Employer should also address other employees that were similarly treated since about January 1, 2018, as well as the Employer's reasons for selecting those employees. Please also describe any investigation that was undertaken by the Employer regarding employee complaints about a hostile work environment, and the outcome of that investigation. Your position statement should include citations to relevant Board law in support of your position.

Moreover, your position statement should address the Charging Party's contention that the Employer, through (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and other (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) interfered with, restrained, and coerced employees in the exercise of Section 7 rights by telling them to stop complaining about terms and conditions of employment and to stop discussing their working conditions with each other.

Finally, please confirm that the factual representations in the allegations paragraph are correct and, if not, clarify with specificity. If the factual representations are not disputed and the Employer defends its action on the grounds that it is authorized to take these actions based on reserved management rights, please provide the basis for such actions. Your position statement should cite appropriate Board authority and you should provide documents substantiating any assertions.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by <u>April 22, 2020</u>. If you are willing to allow me to take affidavits, please contact me by <u>April 15, 2020</u> to schedule a time to take affidavits. Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted.

Please contact me at your earliest convenience by telephone, (602)416-4756, or e-mail, nicholas.gordon@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

Nicholas Gordon Field Attorney

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

(b) (6), (b) (7)(C)		
and		CASE 28-CA-258731
Envita Medical Center 8759 E. Bell Road Building G Scottsdale, AZ 85260		
REGIONAL DIRECTOR	EXECUTIVE SECRETARY NATIONAL LABOR RELATIONS BOARD Washington, DC 20570	GENERAL COUNSEL NATIONAL LABOR RELATIONS BOARD Washington, DC 20570
THE UNDERSIGNED HEREBY	/ ENTERS APPEARANCE AS REPRESENTATI	IVE OF _Envita Medical Center
IN THE ABOVE-CAPTIONED	MATTER.	
CERTAIN DOCUMENTS OR C BOX MUST BE CHECKED. IF	AN ATTORNEY IS AN ATTORNEY, IN ORDER TO ENSURE T	HAT THE PARTY MAY RECEIVE COPIES OF ADDITION TO THOSE DESCRIBED BELOW, THIS VILL RECEIVE ONLY COPIES OF CERTAIN TS AS DESCRIBED IN SEC. 11842 3 OF THE
CASEHANDLING MANUAL.	GES, FETTHONS AND FORMAL DOCUMEN	IS AS DESCRIBED IN SEC. 11842.3 OF THE
	(REPRESENTATIVE INFORM	AATION)
NAME: Jan Hutchison and	Marshall Hunt at Davis Miles McGuire Ga	rdner, PLLC
	Rio Salado Pkwy, Suite 425, Tempe, AZ 8	
E-MAIL ADDRESS: jhutchis	on@davismiles.com and mhunt@davismil	es.com efile.dockets@davismiles.com
OFFICE TELEPHONE NUMB	MER:_480-733-6800	
CELL PHONE NUMBER:		_FAX:480-733-3748
SIGNATURE: (Please sign in it)	k,)	
DATE: 4/14/20		

 $^{^{\}rm I}$ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

☑ Davis Miles	
McGuire Gardner	
40 E. Rio Salado Parkway, Suite 425	
Telephone: (480) 733-6800	
Fax: (480) 733-3748 efile.dockets@davismiles.com	
Marshall R. Hunt, SBN 031060	
I	
	TA A TYONG DO A DD
NATIONAL LABOR RE	ELATIONS BOARD
(b) (6), (b) (7)(C)	Case No. 28-CA-258731
and	NOTICE OF SERVICE OF
Envita Medical Center	NOTICE OF APPEARANCE
NOTICE IS HEREBY GIVEN that unde	rsigned counsel for Envita Medical Center
has hereby filed and served a Notice of Appeara	nce this 14th day of April, 2020, as follows:
ORIGINAL was filed electronically with:	
National Labor Relations Board	
COPY was mailed and emailed to:	
Elliot S. Isaac	
Elliot S. Isaac, P.C.	
l · · · · · · · · · · · · · · · · · · ·	
isaaclawyer@gmail.com	
Attorneys for (b) (6), (b) (7)(C)	
COPY was emailed to:	
Nicholas Gordon	
Nicholas.gordon@nlrd.gov	n
Regional Director for National Labor Relation.	s Board
	McGuire Gardner 40 E. Rio Salado Parkway, Suite 425 Tempe, AZ 85281 Telephone: (480) 733-6800 Fax: (480) 733-3748 efile.dockets@davismiles.com Marshall R. Hunt, SBN 031060 Janet B. Hutchison, SBN 006892 Attorneys for Envita Medical Center NATIONAL LABOR RE (b) (6). (b) (7) (c) and Envita Medical Center NOTICE IS HEREBY GIVEN that unde has hereby filed and served a Notice of Appearance ORIGINAL was filed electronically with: National Labor Relations Board COPY was mailed and emailed to: Elliot S. Isaac Elliot S. Isaac, P.C. 14820 N. Cave Creek Road, Suite 3 Phoenix, AZ 85032 isaaclawyer@gmail.com Attorneys for (b) (6). (b) (7) (c) COPY was emailed to: Nicholas Gordon

DATED this 14th day of April, 2020. DAVIS MILES MCGUIRE GARDNER, PLLC By /s/ Marshall R. Hunt Marshall R. Hunt Janet B. Hutchison Attorneys for Envita Medical Center

From: Jan B. Hutchison To: Gordon, Nicholas Cc: **Marshall Hunt**

Subject: RE: Case 28-CA-258731

Date: Friday, April 17, 2020 4:13:29 PM

Attachments: image001.jpg

image002.jpg image28529d.JPG

Thank you so much. We will be in touch.

Jan

Jan B. Hutchison

Partner

ihutchison@davismiles.com

40 E. Rio Salado Parkway Suite 425



Tempe. AZ 85281 Tel: (480)344-4037

Fax: (480) 733-3748

Link to Online Payment: CLICK HERE

This e-mail message (including attachments) is privileged and confidential, and is only for the use of the individual or entity named therein. If you are not the intended recipient, any use, distribution or copying of this communication or attachments is prohibited. If you are not the intended recipient, please forward this communication to us info@davismiles.com and delete it from your system.

Please consider the environment before printing this email.

From: Gordon, Nicholas [mailto:Nicholas.Gordon@nlrb.gov]

Sent: Friday, April 17, 2020 10:37 AM

To: Jan B. Hutchison < jhutchison@davismiles.com>

Cc: Marshall Hunt <mhunt@davismiles.com>

Subject: RE: Case 28-CA-258731

** External Sender ** Cyber Security Reminder: Send suspicious messages to phishing@davismiles.com.

Hello Jan,

I just wanted to follow up with you about your requested extension. The Region understands the Employer's concerns and can accommodate a brief extension of time to May 1, 2020 to provide the Employer's position statement and evidence. Please be aware that the Region is unlikely to grant additional extensions, but if you anticipate being unable to provide the Employer's evidence by that time give me a call closer to the date and we can discuss. I hope that is helpful is preparing the

Employer's response.

Feel free to give me a call if you have any questions.

Best,

Nick

From: Jan B. Hutchison < <u>ihutchison@davismiles.com</u>>

Sent: Thursday, April 9, 2020 4:29 PM

To: Gordon, Nicholas < <u>Nicholas.Gordon@nlrb.gov</u>>

Cc: Marshall Hunt < <u>mhunt@davismiles.com</u>>

Subject: Case 28-CA-258731

Hello Mr. Gordon,

Thanks for speaking with me today. As I indicated Envita is in need of and has good cause to seek an extension of the deadlines set forth in the letter of April 8, 2020. As with most businesses around the country, Envita is continuing to adjust to the daily changes caused to its business and work environment by the national emergency caused by the COVID-19 virus. These changes have particularly affected Envita's business as an essential healthcare provider providing care to terminally ill and chronically ill patients, as Envita is currently treating several individuals affected by the virus. Additionally, as a research facility, Envita is also focusing substantial resources on not only treatment of active cases but also on developing new treatment procedures, at least one of which is currently undergoing FDA testing. All of this is in addition to the local effects of the virus on Envita's employees and witnesses relevant to this case; both Envita and its counsel are operating as much as possible in compliance with Arizona Governor Doug Ducey's stay-at-home order, and at least one important Envita employee/witness is in active quarantine due to exposure to the virus.

With all the foregoing significantly taxing the time and limited resources Envita has to apply to preparing its response to the charge, Envita respectfully requests a 3-week extension on its time to file a position statement and comply with other requests in the letter.

We appreciate your understanding in this matter and we will work to respond as quickly as possible.

Thanks Jan

Jan B. Hutchison

Partner
jhutchison@davismiles.com

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40 E. Rio Salado Parkway Suite 425 Tempe, AZ 85281 Tel: (480)344-4037

Fax: (480) 733-3748

This e-mail message (including attachments) is privileged and confidential, and is only for the use of the individual or entity named therein. If you are not the intended recipient, any use, distribution or copying of this communication or attachments is prohibited. If you are not the intended recipient, please forward this communication to us info@davismiles.com and delete it from your system.

Please consider the environment before printing this email.

 From:
 Elliot Isaac

 To:
 Gordon, Nicholas

 Cc:
 IDIO TOTAL TOTAL

Subject: Re: 28-CA-258731 Envita Medical Center- Affidavit Review

Date: Thursday, April 23, 2020 7:28:28 PM

Nick - thanks for speaking with me today. We will get the affidavit signed and filed by Monday. We should have settlement papers drafted shortly. Stay safe. Sincerely, Elliot

On Wed, Apr 22, 2020 at 11:57 AM Gordon, Nicholas < Nicholas .Gordon@nlrb.gov > wrote:

Hello Ms. Isaac,

Thank you for letting me know about the potential settlement. Typically, the Regional office gives witnesses about 5 business days to return an affidavit before we consider dismissing for lack of cooperation. I understand that a settlement may resolve the issues in the charge so I can be a little flexible with the timeline to return the affidavit. I can give until the end of the week to return affidavit via e-filing. This should be a pretty easy process to accomplish as it just requires to read over the affidavit, initial and sign.

Additionally, the NLRB has some restrictions on when it can accept a non-Board settlement to resolve a charge, the NLRB restrictions are outlined in OM 07-27. I have attached a copy of the memo to this email. Please keep these requirements in mind when discussing a settlement with the Employer because conflicting settlement terms may require the Regional Director to decline to dismiss the charge and issue subpoenas to compel the parties' participation in the Board's processes. I just want to be clear about this on the front end because I have run into situations where the parties have negotiated a settlement that the Region can't approve of and then significant time and resources are wasted. If you have any questions about OM 07-27 or the requirements for the non-Board settlements please give me a call to discuss.

Thanks,

Please be advised that per GC Memo 20-01, the NLRB will only accept documents via e-filing from this point forward. Please be mindful of the new e-filing requirement as Regional offices have been instructed to disregard documents that are not e-filed on the NLRB.gov website. Instructions for e-filing documents may be found at this link: https://apps.nlrb.gov/myAccount/assets/E-Filing-System-User-Guide.pdf

Nicholas Gordon

Field Attorney

United States Government

National Labor Relations Board, Region 28-Phoenix 602-416-4756

2600 N Central Ave #1400

Phoenix, AZ 85004

The NLRB requires all parties to file documents

electronically through our online E-file system:

Documents: https://apps.nlrb.gov/eservice/efileterm.aspx

New Charge/Petition:

https://apps.nlrb.gov/eservice/efileterm.aspx?

app=chargeandpetition

From: Elliot Isaac <<u>isaaclawyer@gmail.com</u>> Sent: Wednesday, April 22, 2020 11:46 AM

To: Gordon, Nicholas < Nicholas. Gordon@nlrb.gov>

Cc:(b) (6), (b) (7)(C), (b) (7)(D)

Subject: Re: 28-CA-258731 Envita Medical Center- Affidavit Review

Hi Mr. Gordon:

As you know, I represent We are very close to reaching a settlement with Envita (and we understand that any settlement is subject to NLRB approval). Can we put things on hold until the end of the week to see if we can resolve the case? If that presents a problem, please let me know.

Sincerely,

Elliot S. Isaac

(602) 821-0322

On Wed, Apr 8, 2020 at 1:37 PM Gordon, Nicholas < Nicholas.Gordon@nlrb.gov > wrote:

 $\mathrm{Hello}^{^{(b)(0),(b)(7)(0),(b)(7)(D)}},$

Enclosed please find a draft copy of an affidavit based on my telephone interview of you. Please read the affidavit carefully, and, **before you have signed the affidavit**, call me at 602-416-4756, so I can make any necessary changes and swear you to the affidavit.

After I have made any necessary changes to the affidavit and have sent you the final version of the affidavit and you have sworn to it, please do the following:

- 1. initial at the bottom right corner of each page, and
- 2. sign the affidavit in the designated space on the last page.

You should then scan all pages of the initialed and signed affidavit and e-file all pages of the initialed and signed affidavit through this Agency's website. To e-file the affidavit, you should go to www.nlrb.gov, click E-Filing, and then follow the directions for e-filing a document with the Regional Office as an Affidavit.

If you do not have access to a scanner, you can download a scanning app, such as Adobe Scan, on an iPhone, Android, or other smart phone and can use the app to scan your initialed and signed affidavit.

If you do not have access to a printer, scanner, or smartphone and or are otherwise unable to sign, scan, and e-file the final version of your affidavit, you should send the final corrected version of your affidavit to me as an email attachment at nicholas.gordon@nlrb.gov and do the following in your email:

- 1. explain why you are unable to e-file the affidavit;
- 2. state, <u>I swear that the contents of the attached affidavit are true and correct to the best of my knowledge and belief;</u> and
- 3. type your first and last name underneath the statement that you swear to the contents of your affidavit.

Thank you very much for your anticipated cooperation. If you have any questions concerning this letter, please contact me at 602-416-4756

Please be advised that per GC Memo 20-01, the NLRB will only accept documents via e-filing from this point forward. Please be mindful of the new e-filing requirement as Regional offices have been instructed to disregard documents that are not e-filed on the NLRB.gov website. Instructions for e-filing documents may be found at this link: https://apps.nlrb.gov/myAccount/assets/E-Filing-System-User-Guide.pdf

Nicholas Gordon

Field Attorney

United States Government

National Labor Relations Board, Region 28-Phoenix 602-416-4756

2600 N Central Ave #1400

Phoenix, AZ 85004

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Law Office of Elliot S. Isaac, P.C.

14820 N. Cave Creek Road

Suite 3

Phoenix, AZ 85032

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(602) 404-0099

Fax: (602) 404-3516

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Phoenix, AZ 85032
http://www.elliotisaac.com
(602) 404-0099

Fax: (602) 404-3516

From: Gordon, Nicholas

Elliot Isaac To: Cc:

Jan B. Hutchison; (b) (6), (b) (7)(C) adv. Envita Subject: RE: 28-CA-258731; Date: Tuesday, April 28, 2020 4:54:00 PM

Hello Elliott and Jan,

I appreciate the update on a potential non-Board settlement. In light of the likely resolution of the charge, I can provide a brief extension until May 7, 2020 to provide the Employer's position statement. If the parties ultimately execute a settlement agreement then we can discuss again the need for the Employer to submit evidence.

Thanks,

Nick

From: Elliot Isaac <isaaclawyer@gmail.com> **Sent:** Tuesday, April 28, 2020 12:58 PM

To: Gordon, Nicholas < Nicholas. Gordon@nlrb.gov>

Cc: Jan B. Hutchison < jhutchison@davismiles.com > ;(b) (6), (b) (7)(C)

Subject: 28-CA-258731; adv. Envita

Hi Nick - the parties have reached a settlement in principal and we are circulating draft settlement papers. Can we put the investigation on hold as the parties work to reach a settlement? Jan Hutchison, counsel for Envita, is concerned that the deadline to respond to the charge is approaching and she does not want to miss that deadline.

We both understand that NLRB approval of the settlement is required.

Please advise. Stay safe.

Flliot

Law Office of Elliot S. Isaac, P.C. 14820 N. Cave Creek Road Suite 3 Phoenix, AZ 85032 http://www.elliotisaac.com

(602) 404-0099 Fax: (602) 404-3516 From: Gordon, Nicholas

To: "Elliot Isaac"

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Subject: RE: 28-CA-258731; adv. Envita Date: Monday, May 11, 2020 5:04:00 PM

Great thank you. I will get that processed and my office should send out the conditional withdrawal letters shortly.

-Nick

From: Elliot Isaac <isaaclawyer@gmail.com> Sent: Monday, May 11, 2020 2:03 PM

To: Gordon, Nicholas < Nicholas. Gordon@nlrb.gov>

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Subject: Re: 28-CA-258731 (6) (6), (6) (7)(C) adv. Envita

Hi Nick - yes, on behalf of we are requesting conditional withdrawal of the charge conditioned on the parties performance with the terms of the non-Board settlement.

Sincerely,

Elliot

On Mon, May 11, 2020 at 1:57 PM Gordon, Nicholas < Nicholas. Gordon@nlrb.gov> wrote:

Hi Elliot,

Thanks, Nick

From: Elliot Isaac < <u>isaaclawyer@gmail.com</u>> Sent: Monday, May 11, 2020 1:50 PM

To: Gordon, Nicholas < Nicholas. Gordon@nlrb.gov>

Cc: Jan B. Hutchison < ihutchison@davismiles.com > (b) (6), (b) (7)(C)

Subject: Re: 28-CA-258731; adv. Envita

Nick - enclosed is a fully executed copy of the settlement agreement for the NLRB's review.

Please call or email with any questions or comments. Thank you for your assistance. Stay safe.

Elliot

cc: client

On Thu, May 7, 2020 at 1:17 PM Gordon, Nicholas < Nicholas.Gordon@nlrb.gov> wrote:

Yes, if the parties are near to executing the agreement and requesting withdrawal then it is unnecessary to provide a position statement at this time. Please try to finalize the agreement shortly as our internal calculations for backpay continue to accrue and there are certain thresholds where additional internal review has to happen before the Regional Director can approve. I'll be out of the office tomorrow, but you can still send me the executed agreement and I will begin processing on Monday.

Thanks, Nick

From: Elliot Isaac <<u>isaaclawyer@gmail.com</u>> Sent: Thursday, May 7, 2020 12:43 PM

To: Gordon, Nicholas < <u>Nicholas.Gordon@nlrb.gov</u>>

Cc: Jan B. Hutchison < ihutchison@davismiles.com > (b) (6), (b) (7)(C)

Subject: Re: 28-CA-258731; (6)(6)(7)(6) adv. Envita

Nick - we are in the process of finalizing the settlement and circulating for signature. I assume the Employer does not need to submit a position statement. Please confirm.

Stay safe.

Ε

On Tue, Apr 28, 2020 at 1:54 PM Gordon, Nicholas < Nicholas. Gordon@nlrb.gov > wrote:

Hello Elliott and Jan,

I appreciate the update on a potential non-Board settlement. In light of the likely resolution of the charge, I can provide a brief extension until <u>May 7, 2020</u> to provide the Employer's position statement. If the parties ultimately execute a settlement agreement then we can discuss again the need for the Employer to submit evidence.

Thanks,

Nick

From: Elliot Isaac < <u>isaaclawyer@gmail.com</u>> Sent: Tuesday, April 28, 2020 12:58 PM

To: Gordon, Nicholas < <u>Nicholas.Gordon@nlrb.gov</u>>

Cc: Jan B. Hutchison < <u>ihutchison@davismiles.com</u>>; Kristi Darnell < <u>intake.esipc@gmail.com</u>> **Subject:** 28-CA-258731; Constant and a con

Hi Nick - the parties have reached a settlement in principal and we are circulating draft settlement papers. Can we put the investigation on hold as the parties work to reach a settlement? Jan Hutchison, counsel for Envita, is concerned that the deadline to respond to the charge is approaching and she does not want to miss that deadline.

We both understand that NLRB approval of the settlement is required.

Please advise. Stay safe.

Elliot

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Fax: (602) 404-3516

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Fax: (602) 404-3516

From: Elliot Isaac

Gordon, Nicholas (b) (6), (b) (7)(C To: Jan B. Hutchison; (b) (6), (b) (7) Cc: Re: 28-CA-258731 Subject: Date: Monday, May 11, 2020 4:50:58 PM Attachments: 2020 05 11 13 45 23.pdf

Nick - enclosed is a fully executed copy of the settlement agreement for the NLRB's review. Please call or email with any questions or comments. Thank you for your assistance. Stay safe.

Elliot

cc: client

On Thu, May 7, 2020 at 1:17 PM Gordon, Nicholas < Nicholas Gordon@nlrb.gov wrote:

Yes, if the parties are near to executing the agreement and requesting withdrawal then it is unnecessary to provide a position statement at this time. Please try to finalize the agreement shortly as our internal calculations for backpay continue to accrue and there are certain thresholds where additional internal review has to happen before the Regional Director can approve. I'll be out of the office tomorrow, but you can still send me the executed agreement and I will begin processing on Monday.

Thanks,

Nick

From: Elliot Isaac < isaaclawyer@gmail.com> **Sent:** Thursday, May 7, 2020 12:43 PM

To: Gordon, Nicholas < Nicholas. Gordon@nlrb.gov > (b) (6), (b) (7)(C) Cc: Jan B. Hutchison < jhutchison@davismiles.com>

(b) (6), (b) (7)(C)

Re: 28-CA-258731; adv. Envita

Nick - we are in the process of finalizing the settlement and circulating for signature. I assume the Employer does not need to submit a position statement. Please confirm.

Stay safe.

C	On Tue, Apr 28, 2020 at 1:54 PM Gordon, Nicholas < <u>Nicholas.Gordon@nlrb.gov</u> > wrote:			
	Hello Elliott and Jan,			
	I appreciate the update on a potential non-Board settlement. In light of the likely resolution of the charge, I can provide a brief extension until May 7, 2020 to provide the Employer's position statement. If the parties ultimately execute a settlement agreement then we can discuss again the need for the Employer to submit evidence.			
	Thanks,			
	Nick			
From: Elliot Isaac < isaaclawyer@gmail.com> Sent: Tuesday, April 28, 2020 12:58 PM To: Gordon, Nicholas < Nicholas.Gordon@nlrb.gov> Cc: Jan B. Hutchison < ihutchison@davismiles.com>; (b) (6), (b) (7)(C) Subject: 28-CA-258731; (b) (6), (b) (7)(C) adv. Envita				
	Hi Nick - the parties have reached a settlement in principal and we are circulating draft settlement papers. Can we put the investigation on hold as the parties work to reach a settlement? Jan Hutchison, counsel for Envita, is concerned that the deadline to respond to the charge is approaching and she does not want to miss that deadline.			
	We both understand that NLRB approval of the settlement is required.			
	Please advise. Stay safe.			
	Elliot			

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Fax: (602) 404-3516

SETTLEMENT AND RELEASE AGREEMENT

(b) (6), (b) (7)(C) and Envita Medical Center (the "Company") (collectively, the "Parties") enter into this Confidential Settlement and Release Agreement ("Agreement") this 7th day of May, 2020.

- A. (b) (6), (b) (7)(C) was employed by Company on or about (b) (6), (b) (7)(C) 2018;
- B. (b) (6), (b) (7)(c) employment with Company was voluntarily terminated by (b) (6), (b) (7)(c) 2020;
- C. on or about April 2, 2020 given Charge No. 28-CA-258731 (the "Charge");
- D. Company denies the allegations of the Charge; and
- E. Employee and Company desire to enter into this Settlement and Release to resolve all of the allegations made by and all allegations and disputes, including, but not limited to, those that could have been asserted in the Charge with the National Labor Relations Board ("Board"). Accordingly, the Parties agree to the following terms:

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and promises herein contained and other good and valuable consideration, the value of which is hereby acknowledged, the parties agree as follows:

- 1. <u>Settlement Payment.</u> In consideration for the promises (b) (a) (b) (7)(c) has made in this Agreement, the Company agrees to pay (the "Settlement Payment"), less such statutorily required deductions for federal, state and local income tax withholding and social security/medicare taxes, as applicable, in full satisfaction of all of (b) (a) (b) (7)(c) claims, which amount shall be paid as follows:
 - A. The amount of (b) (6), (b) (7)(C), (b) (4) less statutorily required deductions for federal, state and local income tax withholding and social security/medicare taxes, in full satisfaction of (b) (6), (b) (7)(C) claims for backpay, front pay, lost wages, and other injuries, and the release, shall be paid to (b) (6), (b) (7)(C) mailed to (b) (6), (b) (7)(C) attorney, who will immediately deliver the payment to (b) (6), (b) (7)(C) The Company will issue a W-2 to (b) (6), (b) (7)(C) for this payment; and
 - B. The sum of (b) (6), (b) (7)(C), (b) (4) payable as and for attorney's fees and costs shall be paid directly to Elliot Isaac at Elliot S. Isaac, P.C., 14820 N. Cave Creek Road, Suite 3, Phoenix, Arizona 85032. A Form 1099 will be sent to Elliot S. Isaac, P.C.

- 2. Withdrawal of Charge. Solution agrees to immediately, upon execution, request that the Board allow to withdraw to withdraw the Charge, and solution will take any steps necessary or requested by the Board to withdraw the Charge and fully dismiss with no further action needed by or requested from the Company. In the event the Board does not ultimately approve the withdrawal and dismiss the Charge, before the Company is required or requested to present evidence, the Agreement will be null and void and solution and solution will be required to immediately return any sums paid by the Company. The Company agrees to take reasonable steps to assist in (solution) effort to withdraw and close the claim, except that the Company will not be required to present evidence, and the parties agree that they may provide the NLRB with a draft and/or final draft of the Agreement.
- General Release of Claims by [0.6.6070], [0.60.6070], on behalf of <u>3.</u> executors, administrators, and assigns, knowingly and voluntarily waives and releases the Company and its parent, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and former employees, attorneys, officers, directors, shareholders, members, and agents (collectively, the "Released Parties"), from any and all claims, known and unknown, that [5](8)(6)(7)(5) has or may have against the Released Parties as of the date of execution of this Agreement. This release is comprehensive and includes any claim that [5](6),(5)(7)(6) could assert against the Released Parties based upon acts or omissions that occurred, or that could be alleged to have occurred, before (6),(6)(7)(6) executes this Agreement. This release is intended to be as comprehensive as can be conceived and the law will allow, and includes but is not limited to claims based on: negligent or intentional tortious conduct; express or implied contract; covenants of fair dealing and good faith; wrongful discharge; violations of federal law, including the National Labor Relations Act, the Age Discrimination in Employment Act ("ADEA"), the Family and Medical Leave Act, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991, Sections 1981 through 1988 of Title 42 of the United States Code, the Equal Pay Act; the Employee Retirement Income Security Act of 1974, the Americans with Disabilities Act, the Worker Adjustment Retraining and Notification Act; and any other federal or state common law or federal, state or local laws, ordinances, or regulations; any other public policy, contract, tort or common law theory; or any statutory or common law principle allowing for the recovery of fees or other expenses, including claims to attorneys' fees. This release does not apply to any claims that cannot be released as a matter of law, such as those that arise after the date (10,00,00,00) executes this Agreement or claims for ERISA plan benefits.

This release does not apply to any claims that may be asserted in an administrative charge filed with a governmental or regulatory enforcement agency, including the Equal Employment Opportunity Commission (EEOC) or other federal, state or local agencies, although releases any right to monetary recovery, reinstatement right, or other legal or equitable relief in connection with such a charge.

4. Representations and Affirmations by (0)(0),(0)(7)(0)

- A. bonuses, commissions, benefits any other monies due and owing to bonuses, commissions, benefits any other monies due and owing to bonuses, commissions, benefits any other monies due and owing to bonuses, commissions, benefits any other monies due and owing to bonuses, commissions, benefits any other monies due and owing to bonuse, resulting from employment with the Company. Solution also affirms that all of the Company's decisions regarding pay and benefits through the date of solution of this Agreement were not discriminatory based on age, disability, race, color, sex, religion, or national origin. Solution also affirms that solution has been granted any leave to which was entitled under the Family and Medical Leave Act or related state or local leave or disability accommodation laws. Solution further affirms that state or known workplace injuries or occupational diseases.
- B. prepresents and warrants that is over 18 years of age and under 40 years of age.
- C. acknowledges that remains bound by the confidentiality, nondisclosure and competition documents executed at hiring.
- 5. No Other Outstanding Claims or Causes of Action. Tepresents and warrants that, except for the Charge, has not filed with any governmental agency or court any type of action against the Company or any of the Released Parties. The claims and agrees that if any action is brought by a third party with regard to the claims and causes of action released in this Agreement, will not accept any payments or monetary relief relating to any such claims or causes of action.
- 6. Agreement Not To Seek Or Accept Future Employment. As further consideration, agrees that, because of circumstances unique to her (including irreconcilable differences with certain (b) (6), (b) (7)(C) and employees), will not apply for or accept future employment with the Company, its parent, subsidiary, affiliate, or successor companies (collectively referred to as the "Company" in this section); and that in the event does apply for such employment with the Company, the Company may reject application legitimately and lawfully solely because breached this promise.

7. Confidentiality and Non-Defamation.

A. agrees that, unless is compelled to do so by law, will not disclose to any other person any information regarding the financial terms of this Agreement, except that may discuss the financial terms of this Agreement with spouse, tax advisor, or an attorney with whom chooses to consult regarding consideration of this Agreement, provided that any such individual agrees to keep that

has not made any prior disclosures that, if made after signing this Agreement, would have violated this obligation of confidentiality.

of the consideration is giving to the Company in this Agreement is an important part of the consideration is giving to the Company in this Agreement and for which the Company is making the Settlement Payment and that it would be very difficult for the Company to quantify the effect of a breach of this provision. Accordingly, breaches the promises has made in this subsection 7(A), or if spouse, attorney, or tax advisor to whom discloses any information about this Agreement discloses information that would, if disclosed by solve information about this Agreement discloses information that would, if disclosed by state in this section are not intended to interfere with or restrict in any way solve ability to communicate with a governmental or regulatory enforcement agency.

- B. In addition, agrees not to defame or make defamatory comments about the Company, its shareholders, members, officers, directors, agents, or employees either directly or indirectly, in person, in written form, or on the internet or on social media. Officers understands that the non-defamatory provision of this Agreement is an important part of the consideration is giving to the Company in this Agreement and for which the Company is making the Settlement Payment. Accordingly, Officer agrees that if the breaches the promises of this Agreement and Company and Released Parties shall be entitled to remedies at law or in equity as provided in Section 17 below.
- C. understands that the promises has made in this section are not intended to interfere with or restrict in any way ability to communicate with a governmental or regulatory enforcement agency.

8. Additional Terms of Agreement.

- A. Company agree that the termination will be referred to as such by each Party.
- C. (b) (6), (b) (7)(C) 2020.
- 9. <u>Interpretation; Severability.</u> Should any court of competent jurisdiction declare any

provision of this Agreement unenforceable, that provision shall be deemed severable from all other provisions of this Agreement, and all other provisions shall remain enforceable, except that if any part or all of the release contained in Section 3 is held invalid, agrees to execute a valid, full and final release in favor of the Released Parties. The Parties agree that they have fully negotiated the terms of this Agreement and that its terms, provisions, and conditions shall not be interpreted or construed against either party.

- 10. No Admission of Wrongdoing. The Parties have entered into this Agreement solely to resolve disputed claims based on disputed facts and allegations and to avoid the costs and risks of litigation. Neither the fact of this Agreement nor any of its parts shall be construed as an admission of wrongdoing, liability, or that any fact or allegation asserted by was true. The Company adamantly denies the allegations
- 11. Amendment. This Agreement may not be modified except through a written document, signed by an authorized representative of each of the Parties, in which the Parties expressly agree to modify it.
- 12. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties and supersedes any prior oral or written agreements or understandings between them regarding its subject matter. (19(1), (19(1)) acknowledges that (19(1)) has not relied on any representations, promises, or agreements of any kind made to (19(1)) in connection with (19(1)) decision to make this Agreement, except for those set forth in this Agreement.
- 13. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one Agreement, and each of which separately shall constitute an original document.
- 14. Time To Negotiate and Consider This Agreement. In addition to having the opportunity to negotiate the terms of this Agreement before signing it, has been advised to consult with an attorney to obtain advice about rights and obligations under this Agreement. The presents that the carefully read this Agreement and finds that it has been written in language that understands. The presents are described in the considering and understanding it. If the considering are the considering and understanding it. If the considering is expressly waiving the considering and the considering and the considering are that any changes made to this Agreement from the version originally presented to the parties agree that any changes made to this Agreement from the version originally presented to the consider this Agreement to consider the 21 days that the considering are deemed material or non-material, do not extend the 21 days that the considering are deemed material or non-material, do not extend the 21 days that the considering are deemed material or non-material, do not extend the 21 days that the considering are deemed material or non-material, do not extend the 21 days that the considering are deemed material or non-material.
- and has relied on counsel of own choice throughout the negotiation and preparation of this Agreement and the Release. O(0.00/7/C) acknowledges that has carefully read this Agreement and Release and that counsel has fully explained its contents to
- 16. Agreement Governed by Arizona Law. This Settlement Agreement is governed in all respects by the laws of the State of Arizona without regard to the choice of law provisions

thereof. This Agreement may not be used in any action or proceeding, except as necessary to enforce the terms of this Agreement.

- Agreement, including but not limited to her obligations in the paragraphs pertaining to Defamation and Future Actions, and/or commences a suit or action or complaint in contravention of this release and waiver of claims, Company's obligations to pay the monies and/or provide the benefits referred to above shall immediately cease and Company shall be entitled to all remedies allowed in law or equity, including but not limited to the return of any payments made to
- 18. Attorneys' Fees. If any action shall be brought in connection with this Agreement, or for or on account of any breach thereof, or to enforce or interpret any of its terms, covenants or conditions, the prevailing party, determined by the court, shall be entitled to an award against, and may recover from any other party or parties, the prevailing party's costs, reasonable attorneys' fees and litigation-related expenses.
- 19. Construction. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties and without regard to any presumption or other rule requiring construction against the party preparing this Agreement, or any part thereof. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural numbers, shall each be deemed to include the other whenever the context so requires. The headings of this Agreement are for ease of reference only and shall not limit or define the meaning of any provision of this Agreement. To the fullest extent possible, each provision of this Agreement shall be interpreted in such fashion as to be effective and valid under applicable law.

BECOME A LEGALLY ENFORCEABLE AGREEMENT UNDER WHICH WILL BE GIVING UP RIGHTS AND CLAIMS OF MAY HAVE, ON THE TERMS STATED IN THIS AGREEMENT.

(b) (6), (b) (7)(C)						
(b) (6), (b) (7)(c) (b) (6), (b) (7)(c) (b) (6), (b) (7)(c) (c) (d) (d) (d) (d) (d) (d) (d) (d) (d) (d	3, 2020)					
Dated:	May 8, 2020					
Envita M						
By: Its:						

Dated:

- Settlement - revised - EI - clean

Final Audit Report

2020-05-08

Created: 2020-05-07.

By: Elliot Isaac (Isaaclawyer@gmail.com)

Status: Signed

Transaction ID: CBJCHBCAABAAOa2liZKvgnAThms_43UftjfGt6hEwKH4

- Settlement - revised - EI - clean" History

- Document created by Elliot Isaac (isaaclawyer@gmail.com) 2020-05-07 9:56:05 PM GMT- IP address: 68.98.0.171
- Document emailed to (b) (6), (b) (7)(C) for signature 2020-05-07 9:56:40 PM GMT
- Email viewed by (b) (6), (b) (7)(C)
 2020-05-07 9:56:45 PM GMT- IP address: 66,249,88,19
- Document e-signed by (b) (6), (b) (7)(C)

 Signature Date: 2020-05-08 7:06:34 PM GMT Time Source: server- IP address: 96.32.108.46
- Signed document emailed to (b) (6), (b) (7)(C) and Elliot Isaac (isaaclawyer@gmail.com)

thereof. This Agreement may not be used in any action or proceeding, except as necessary to enforce the terms of this Agreement.

- Agreement, including but not limited to her obligations in the paragraphs pertaining to Defamation and Future Actions, and/or commences a suit or action or complaint in contravention of this release and waiver of claims, Company's obligations to pay the monies and/or provide the benefits referred to above shall immediately cease and Company shall be entitled to all remedies allowed in law or equity, including but not limited to the return of any payments made to an under this Agreement.
- 18. Attorneys' Fees. If any action shall be brought in connection with this Agreement, or for or on account of any breach thereof, or to enforce or interpret any of its terms, covenants or conditions, the prevailing party, determined by the court, shall be entitled to an award against, and may recover from any other party or parties, the prevailing party's costs, reasonable attorneys' fees and litigation-related expenses.
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UNDERSTANDS THAT ONCE SIGNS BELOW, THIS DOCUMENT WILL BECOME A LEGALLY ENFORCEABLE AGREEMENT UNDER WHICH WILL BE GIVING UP RIGHTS AND CLAIMS MAY HAVE, ON THE TERMS STATED IN THIS AGREEMENT.

(b) (6), (b) (7)(C)

b) (6), (b) (7)(C)
Dated:
Envita Medical Center (b) (6), (b) (7)(C) By:
Its:



UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD REGION 28 2600 North Central Avenue

Suite 1400 Phoenix, AZ 85004-3099

Agency Website: www.nlrb.gov Telephone: (602) 640-2160 Fax: (602) 640-2178

May 14, 2020

Jan Hutchinson, Attorney at Law Marshall Hunt, Attorney at Law Davis Miles McGuire Gardner, PPLC 40 East Rio Salado Parkway, Suite 425 Tempe, AZ 85283

Re:

Envita Medical Center Case 28-CA-258731

Dear Ms. Hutchinson and Mr. Hunt:

The Charging Party has asked to withdraw the above charge based upon a private agreement between the parties. I have approved this request, conditioned on the performance of the undertakings in that private agreement.

The charge is subject to reinstatement for further processing if the Charging Party requests reinstatement and supports its request with evidence of non-compliance with the undertakings in the private agreement.

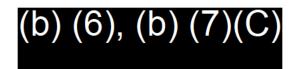
Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet Regional Director

Envita Medical Center cc: 8759 East Bell Road, Building G Scottsdale, AZ 85260

Elliot Isaac, Attorney at Law 14820 North Cave Creek Road, Suite 3 Phoenix, AZ 85032



CAO:NG:mhz

From: Jan B. Hutchison Gordon, Nicholas To: "Elliot Isaac" Cc:

adv. Envita Subject: RE: 28-CA-258731; Date: Wednesday, May 20, 2020 2:16:29 PM

Attachments: image881054.JPG

Nick

Thanks for your assistance.

Jan

Jan B. Hutchison

Partner

ihutchison@davismiles.com

40 E. Rio Salado Parkway Suite 425



Tempe, AZ 85281 Tel: (480)344-4037

Fax: (480) 733-3748

To make a secure online payment: <u>CLICK HERE</u>

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Please consider the environment before printing this email.

From: Gordon, Nicholas [mailto:Nicholas.Gordon@nlrb.gov]

Sent: Wednesday, May 20, 2020 9:00 AM **To:** Elliot Isaac <isaaclawyer@gmail.com>

Cc: Jan B. Hutchison < jhutchison@davismiles.com > (b)(6),(b)(7)(C)

Subject: RE: 28-CA-258731 adv. Envita

** External Sender ** Cyber Security Reminder: Send suspicious messages to phishing@davismiles.com.

Thanks for the update Elliot. It looks like the Region issued the conditional withdrawal letters on 5/14/2020. The case has been closed in our files now, unless the Charging Party provides evidence of a material breach of the non-Board settlement.

I appreciate both your and Jan's efforts to resolve this issue quickly.

Please be advised that per GC Memo 20-01, the NLRB will only accept documents via e-filing from this point forward. Please be mindful of the new e-filing requirement as Regional offices have been instructed to disregard documents that are not e-filed on the NLRB.gov website.

Instructions for e-filing documents may be found at this link:

https://apps.nlrb.gov/mvAccount/assets/E-Filing-System-User-Guide.pdf

Nicholas Gordon Field Attorney United States Government National Labor Relations Board, Region 28-Phoenix 602-416-4756 2600 N Central Ave #1400 Phoenix, AZ 85004

The NLRB requires all parties to file documents electronically through our online E-file system:

Documents: https://apps.nlrb.gov/eservice/efileterm.aspx

New Charge/Petition:

https://apps.nlrb.gov/eservice/efileterm.aspx?

app=chargeandpetition

From: Elliot Isaac < <u>isaaclawyer@gmail.com</u>>
Sent: Wednesday, May 20, 2020 8:55 AM

To: Gordon, Nicholas < Nicholas.Gordon@nlrb.gov>

Cc: Jan B. Hutchison < in the interior <

Subject: 28-CA-258731; adv. Envita

Hi Nick - we received the settlement checks. I will be sending the check for b (6), (b) (7)(C) to Fedex today.

Thanks again.

Elliot

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Law Office of Elliot S. Isaac, P.C. 14820 N. Cave Creek Road Suite 3 Phoenix, AZ 85032 http://www.elliotisaac.com (602) 404-0099

Fax: (602) 404-3516

Case Name: Envita Medical Center

Case No.: 28-CA-258731

Agent: Field Attorney Nicholas Gordon

CASEHANDLING LOG

Date	Person	Method of	Description of Contact or Activity
	Contacted	Contact	1
4/9/2020	Jan Hutchinson, Er Counsel	Phone	Er counsel called to get more information about charge and request an extension to respond to RFE. Counsel wanted 60 to 90 days additional time to respond. Informed counsel that was not possible and that Region may be able to extend about 1 or 2 more weeks on good cause. Counsel said that the Er was a medical center currently treating COVID-19 patients and that many of their staff had been quarantined so it was not possible for counsel to speak with managers and supervisors or visit the facility. I explained that Counsel could send an email with her request and I would speak with Regional management about it. Counsel also asked for information about the Board's processes and how to respond. Explained that the investigation was voluntary and that the majority of Employers provide a position statement and evidence. Counsel asked about affidavits. I explained that Board affidavits carry more weight than Er drafted affidavits and that Board affidavits can be conducted by phone. Counsel asked about allegations in the charge. Explained that the RFE gives more detail about the allegations that are presently being investigated, but that if additional evidence/witnesses were presented, the Er would be given an opportunity to respond. Counsel asked about settlement. Explained the difference between NBS and Board settlement and how the Region views both. Explained that CP is represented by counsel so Er counsel could contact him in order to negotiate, but there are certain requirements that need to be met before the RD will accept a NBS. Also explained Board settlement process. Counsel asked about remedies. Explained that there is backpay, reinstatement, and a notice posting for discharge cases. Counsel said that she would speak with her client about how to respond to the charge. Told Counsel to file an

Date	Person Contacted	Method of Contact	Description of Contact or Activity
			NOA and send me an email about the requested extension.